IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 227 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ORIENT CONSTRUCTION CO.

Versus

UNION OF INDIA

Appearance:

1. Appeal from Order No. 227 of 1999
MR RA MISHRA for Petitioner No. 1
..... for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 14/09/2001

ORAL JUDGEMENT

1. The appellant M/s. Orient Construction Co. has filed this Appeal against the impugned Judgment and Decree dated 10.2.1999 passed by the learned City Civil Judge, Ahmedabad, Court No.14, in Civil Misc.

Application Nos.893/97, 236/98 and 181/98 whereby the learned Judge allowed Civil Miscellaneous Application No.893/97 and made Award dated 10.2.1999 passed by the Arbitrator between the parties in Arbitration Proceeding in connection with Agreement No.37/EE PCD/AHD/89-90 as rule of the Court.

2. Learned Counsel Shri Mishra for the appellant vehemently submitted that the learned Judge has not at all taken into consideration the fact that the same Arbitrator in another case had passed award on same point, but in the instant case the same was not considered. He submitted that though this point was specifically argued the same was not dealt with. In support of his submission he has tried to rely upon the averments made by the appellant in Para : 5 of the Memo of this Appeal.

3. I am afraid, this point was not at all raised before the learned Judge who has made rule of Court. What has been contended in Para : 5 of Memo of this Appeal is that "....it is significant to note that the same arbitrator had allowed one of the similar claim in the earlier proceeding and in the present the same type of claim is rejected without any cause or reason." Nothing more than what has been stated. In that view of the matter this point cannot be allowed to be raised for the first time in this Appeal.

4. The Hon'ble Supreme Court has held that "...all that as it has to see is whether the Award can be challenged on the ground of exercise of jurisdiction, incompleteness or misconduct as understood in law." (See AIR 1971 SC 1946). The instant case does not fall in any of the aforesaid three categories. In that view of the matter this Appeal is required to be dismissed. Accordingly, it is dismissed.

As the main Appeal from Order is dismissed, Civil Application No.9344 of 1999 will not survive. Disposed of accordingly.

sd/-

Date : September 14, 2001 (B.J.Shethna, J.)

sas